CASE LAW UPDATE

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State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – "specific intent to kill"**

- A jury convicted Raheem D. King of the **attempted murder and armed robbery** of a Charleston cab driver and the related charge of possession of a firearm during the commission of a violent crime.

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – "specific intent to kill"**

- One view of the evidence was that "As Brown **(the cab driver) tried again to move the gun away from his face, the man shot Brown in the elbow**. The shot entered Brown's elbow and exited through his forearm."

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – "specific intent to kill"**

- We agree with the Court of Appeals that "**the Legislature intended to require the State to prove specific intent to commit murder as an element** of attempted murder, and therefore the trial court erred by charging the jury that attempted murder is a general intent crime."

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – "specific intent to kill"**

- The majority of courts in other jurisdictions have concluded that attempted murder requires the **specific intent** to kill.

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – "specific intent to kill"**

- Attempted murder can be committed only when the accused's acts are accompanied by ***express malice*, malice in fact**. One cannot *attempt* to kill another with implied malice because there "is no such criminal offense as an attempt to achieve an unintended result."

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – "specific intent to kill"**

- **"An attempt, by nature, is a failure to accomplish what one *intended* to do.** Attempt means to try; it means an effort to bring about a desired result. . . .
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State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – "specific intent to kill"**

- **. . . Thus one cannot *attempt* to be negligent or *attempt* to have the general malignant recklessness contemplated by the legal concept, 'implied malice'"**

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – "specific intent to kill"**

- "One cannot be guilty of attempted murder by implied malice because implied malice **does not encompass** the essential **specific intent** to kill."

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – HEARSAY**

- [T]he State contends that, even if Officer Butler's testimony (**number of shots others allegedly heard**) constituted inadmissible hearsay, any error in its admission was harmless beyond a reasonable doubt.

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – HEARSAY**

- We agree with the Court of Appeals that the trial judge erred in admitting the testimony of Officer Butler.
- Additionally, like the Court of Appeals, we conclude that the error, if combined with the erroneous attempted murder jury instruction, was not harmless as to the attempted murder charge.

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – HEARSAY**

- **"[W]e caution against the use and admission of 'investigative information.'** While it may be couched in terms of explaining an officer's conduct during an investigation, . . .
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State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – HEARSAY**

- . . . it may not be used **to offer the substance of an out-of-court statement that would otherwise violate our state's rules against hearsay**."

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- **Admissibility of Detention Center Phone Call**
- King argues the Court of Appeals erred in summarily affirming the judge's decision permitting the State **to publish to the jury a recording of a fifteen-minute phone call King made while incarcerated**.

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- Because the State's purpose in introducing the recording was to establish King's ownership of the cellphone number used to contact the cab company, King asserts this could have been accomplished by introducing detention center phone logs.

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- **Rule 403, SCRE**: Further, King maintains that any probative value of the recording was substantially outweighed by the danger of unfair prejudice created by the recording, …
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State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- . . . **which contained a profanity-laced conversation between King and another individual** *that inferred King had been charged with prior crimes similar to those for which he was currently on trial.*

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- For several reasons, we agree with King that the trial judge abused his discretion in admitting the recorded phone conversation.

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- First, **the judge adamantly refused to listen to the recording prior to publishing it to the jury. By failing to listen to the recording** or requiring the State to produce a transcription of the recording for his review, we find the judge abused his discretion.
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State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- See State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) (stating that "**[i]t is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted** as it is to exercise the discretion improperly").

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- Second, without listening to the recording, the judge was unable to determine whether the probative value outweighed any unfair prejudice.

State v. Raheem D. King, 422 S.C. 47, 810 S.E.2d 18 (October 25, 2017) – **Attempted Murder – JAIL TAPES**

- Third, the limited probative value of the recording was outweighed by the unfair prejudice to King. **The fifteen-minute recording is riddled with profanity, racial slurs, and impermissible references to King's prior bad acts**. See State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001) ("Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on **an improper basis**, such as an emotional one.").

CASE IN THE HOPPER

State v. James Scott Cross – Appellate Case No. 2016-001939 (Argued May 3, 2018) – Bifurcating a trial to ensure a fair trial

- ISSUE: Whether the Court of Appeals erred by ruling it was not an abuse of discretion for the trial court **to refuse to bifurcate petitioner's trial so that the jury could:**

CASE IN THE HOPPER

State v. James Scott Cross – Appellate Case No. 2016-001939 (Argued May 3, 2018) – Bifurcating a trial to ensure a fair trial

1. **First determine his guilt or innocence of the underlying criminal sexual offense** charge, and
2. then determine if he had the requisite prior sex conviction under the statute.

CASE IN THE HOPPER

State v. James Scott Cross – Appellate Case No. 2016-001939 (Argued May 3, 2018) – Bifurcating a trial to ensure a fair trial

- "The Court's holding that bifurcation was not Constitutionally required did not address the discretionary issue on appeal that bifurcation was a readily available mechanism to provide petitioner a fair trial, and that it was an abuse of discretion to deny this most reasonable relief."

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- The central issue before the Court concerns authentication of Global Positioning System (GPS) monitoring evidence.
- Specifically, is the requirement for authentication satisfied by testimony that GPS data is accurate because "[w]e use it in court all the time"?
- **The answer is an unqualified "no."**

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- A Zaxby's restaurant in Goose Creek, South Carolina was robbed by two males wearing ski masks and gloves while carrying a gun and knife, around midnight on Christmas Eve.
- There was **a tip that Petitioner confessed to committing the crime with Christopher Wilson**.

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- During the course of their investigation, law enforcement discovered that Wilson was wearing a GPS ankle monitor at the time of the robbery. **Wilson's GPS records reflected that he was at Zaxby's during the robbery**.

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- **Wilson pled guilty prior to Petitioner's trial.**
- This appeal is centered on Petitioner's challenge that the State failed to authenticate Wilson's GPS records.
- **We hold that the State failed to properly authenticate the GPS records, and it was error to admit this evidence.**

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- The State presented [Probation] Agent Steward Powell's testimony to authenticate the GPS records.
- Testimony: "The State has a GOC, general operations center, in Columbia. **These offenders are tracked, 24 hours a day, seven days a week** so they're always monitored."

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

Q. Is that information recorded?

A. **It's recorded** and it's archived.

Q. How is it recorded?

A. **It's recorded by a third party vendor** [Omni Link] that supplied the software and the hardware, the actual ankle monitor, for the system.

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

Q. *Is that information accurate?*

A. ***It is very accurate. We use it in court all the time.***

(emphasis added). ***The GPS records were admitted into evidence.***

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- The main issue before this Court is whether Agent Powell's testimony was sufficient to authenticate the GPS records. We hold that **the GPS records were not properly authenticated**.

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- **It is black letter law that evidence must be authenticated or identified in order to be admissible**. See State v. Rich, 293 S.C. 172, 173, 359 S.E.2d 281, 281 (1987).

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- The method at issue here is:
  - (9) *Process or System*. Evidence describing a process or system used to produce a result **and** showing that the process or system **produces an accurate result**.
  - **Rule 901(b)(9), SCRE**

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- We acknowledge that the **reliability** or operation of GPS technology **in general is not genuinely disputed**.

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- **This general acceptance of GPS technology does not**, however, translate to the State getting a pass from making a minimum **showing that the GPS records it seeks to introduce into evidence are accurate**.
- The testimony of Agent Powell failed to authenticate because it shed **no light on the accuracy** of the GPS records.

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- After reviewing various authorities, **we require:**
  1. That a witness should **have experience** with the electronic monitoring system used and,
  2. Provide testimony **describing the monitoring system**,
  3. **the process of generating or obtaining records**, and
  4. how this process **has produced accurate results** for the particular device or data at issue.

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- As noted, the witness **need not be an expert**.
- However, even under the minimally burdensome test we set forth, Agent Powell failed to properly authenticate **the accuracy of the GPS records**.

State v. Donte Samar Brown, Op.No. 27836 (filed August 29, 2018) – Authentication of GPS monitoring evidence

- Thus, **it was error** for the trial court to admit this evidence because **the GPS records were not properly authenticated**.

State v. Michael Juan Smith, Op. No. 5591 (filed August 15, 2018) – **DV on specific intent to kill, transferred intent, and self-defense**

- Gang shooting in Five Points that left a college student paralyzed.

State v. Michael Juan Smith, Op. No. 5591 (filed August 15, 2018) – **DV on specific intent to kill, transferred intent, and self-defense**

- The supreme court also stated, "One cannot be guilty of attempted murder **by implied malice because implied malice does not encompass the essential specific intent to kill**."

State v. Michael Juan Smith, Op. No. 5591 (filed August 15, 2018) – **DV on specific intent to kill, transferred intent, and self-defense**

- Here, there was **ample evidence** showing that Appellant's **intentional use of deadly force (in purported self-defense) was unjustified**.

State v. Michael Juan Smith, Op. No. 5591 (filed August 15, 2018) – **DV on specific intent to kill, transferred intent, and self-defense**

- Appellant cites State v. Hinton, 227 Conn. 301, 630 A.2d 593, 600-02 (1993) in support of the proposition **that the transferred intent doctrine does not apply to attempt crimes**. (Court held Hinton distinguishable based on that state's statutory scheme).

State v. Michael Juan Smith, Op. No. 5591 (filed August 15, 2018) – **DV on specific intent to kill, transferred intent, and self-defense**

- The foregoing evidence shows Appellant's **unjustified, specific intent to kill at least one of the three men he encountered**.

State v. Michael Juan Smith, Op. No. 5591 (filed August 15, 2018) – **DV on specific intent to kill, transferred intent, and self-defense**

- Further, the State showed specific intent *as to the Victim* through **the doctrine of transferred intent.**

State v. Michael Juan Smith, Op. No. 5591 (filed August 15, 2018) – **DV on specific intent to kill, transferred intent, and self-defense**

- "**When a defendant contemplates or designs the death of another**, the purpose of deterrence is better served by *holding that defendant responsible for the knowing or purposeful murder of the unintended* ***as well as the intended victim.***"
- **Smith not entitled to a directed verdict.**

State v. Shannon Scott, Op. No. 27834 (filed August 29, 2018) – **Immunity**

- Cf. State v. Shannon Scott, Op. No. 27834 (filed August 29, 2018), -- **affirming as modified the Court of Appeals holding that Scott was entitled to immunity where he shot back in self-defense during a drive by shooting at his house in protection of his family,** . . .
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State v. Shannon Scott, Op. No. 27834 (filed August 29, 2018) – **Immunity**

- … and **rejecting the state's argument that the decedent hit was an "innocent bystander"** and that the **doctrine of transferred intent should apply**.

State v. Shannon Scott, Op. No. 27834 (filed August 29, 2018) – **Immunity**

- Court held Scott was entitled to immunity under subsection (C), and not (A). No one was "in the process of unlawfully and forcefully entering a dwelling or residence."

State v. Shannon Scott, Op. No. 27834 (filed August 29, 2018) – **Immunity**

- **Scott did not need the presumption of reasonable fear in subsection (A) because his fear was proved to the Circuit Court to be reasonable.**

State v. Shannon Scott, Op. No. 27834 (filed August 29, 2018) – **Immunity**

- The circuit court found subsection 16-11-440(C) applied to Scott, and the court of appeals agreed. Scott, 420 S.C. at 114, 800 S.E.2d at 796.

State v. Shannon Scott, Op. No. 27834 (filed August 29, 2018) – **Immunity**

- **We agree. Scott** (1) was "not engaged in an unlawful activity," (2) **was "attacked,"** (3) was "in another place where he ha[d] a right to be," and . . .

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State v. Shannon Scott, Op. No. 27834 (filed August 29, 2018) – **Immunity**

- . . . (4) "**reasonably believe[d] [the use of deadly force] [wa]s necessary** to prevent death or great bodily injury to himself or another person."

CASE IN THE HOPPER
State v. Harold Bennon Cartwright, III, Appellate Case No. 2016-000005 (Argued March 22, 2017)

- Whether the Court of Appeals erred by finding **no error in the trial court admitting evidence petitioner attempted to commit suicide while incarcerated** on the charges in this case since this evidence **was**:

CASE IN THE HOPPER

State v. Harold Bennon Cartwright, III, Appellate Case No. 2016-000005 (Argued March 22, 2017)

1. **irrelevant**, and even if relevant,
2. its probative value was substantially outweighed by its unduly prejudicial effect **under Rule 403, SCRE**?

CASE IN THE HOPPER
State v. Harold Bennon Cartwright, III, Appellate Case No. 2016-000005 (Argued March 22, 2017)

- Remember: Confusion of the issues in Rule 403, SCRE.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **King shot and killed his neighbor James Galloway (Victim)** inside Victim's home during the early morning hours of November 11, 2011.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- The State contends **King then pistol-whipped** Karen Galloway **(Wife)** and pointed the gun at both Wife **and Reggie Cousar (Cousin)**.
- King fled the scene when a Marlboro County Sheriff's Office (MCSO) deputy arrived.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- King appealed his murder and possession of a firearm during the commission of a violent crime convictions, and **the court of appeals remanded the case to the trial court to conduct a full Rule 404(b), SCRE analysis regarding the trial court's admission of certain other bad act evidence**.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **During a pretrial hearing**, King moved to exclude several portions of his first recorded interview.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- Throughout King's objections, the State and the trial court commented on the apparent **technological impossibility of redacting certain statements** from the recorded interview.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **Trial testimony** – Investigator Feldner did not mention King's unrelated murder charge or the pending McColl (gun) charges during his summary. **However, when the first interview was published to the jury, it included references to both the unrelated murder charge and the McColl charges**.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **Preservation: King preserved his other bad act argument regarding his unrelated murder charge and his pending McColl charges.**

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **Pretrial**, King **moved for several references to these charges to be redacted** from the recorded interviews.
- The trial court **permitted references to the unrelated murder and pending McColl charges to remain** in the portion of King's first recorded interview published to the jury.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **When objecting** to the references to the McColl charges in that portion of the interview, **King cited to Rules 401, 403, and 404(b), SCRE**.
- **When objecting** to evidence of the unrelated murder charge in that portion of the interview, **King cited rule 404 (b), SCRE**.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **Without any on-the-record explanation or analysis, the trial court made a pretrial ruling that this evidence was admissible.**

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- King **memorialized his pretrial objections in an email** he sent to the trial court. On the morning trial began, **King renewed his objections when the state offered the recorded interviews into evidence**, but the trial court again overruled his objections.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **The trial court made its rulings final and stated, "I don't want you to make your objections again as to those items, the second part. You've made them and are protected for the record. . . .We don't want to waste another day with objections."**

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **Other bad acts evidence**:
  - Evidence of **other bad acts is generally inadmissible to prove a defendant's guilt for the crime charged**; however, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- **Other bad acts evidence**:
  - If the defendant was not convicted of the prior crime, **evidence of the prior bad act must be clear and convincing**.

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- Nevertheless, this other bad act evidence **must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant**. Rule 403, SCRE (providing that although evidence may be relevant, it may be excluded "**if its probative value is substantially outweighed by the danger of unfair prejudice**").

State v. Tyrone J. King, Op. No. 27826 (July 18, 2018) – Rule 401, Rule 403 & Rule 404 (b) objections

- Here, the Court of Appeals correctly held the trial court erred in failing to conduct a Rule 404(b) analysis before admitting evidence of King's **unrelated murder charge and his pending McColl Charges**.
- **New trial ordered.**

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Jones was convicted of first degree criminal CSC with a minor and second degree CSC with a minor pertaining **to his girlfriend's two daughters**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Daughter 1 estimated Jones **sexually abused her over a hundred times** until it came to a halt in 2009 when Jones was imprisoned for assault and battery of a high and aggravated nature.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- The younger daughter (Daughter 2) testified Jones began molesting her **when she was around ten years old**, also beginning as touching and groping before escalating into forced sexual intercourse.
- **Daughter 2 claimed she told Mother about the abuse, but Mother did not take any steps to stop it**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- When called to testify, Mother admitted Daughter 2 told her about the abuse, but explained **she did not immediately notify the authorities after learning of the allegations because she feared they would take her children from her**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Jones denied ever sexually abusing the victims and claimed the charges were brought against him in retaliation after he caught Daughter 1 stealing money from him.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- The State then presented expert testimony from Shauna Galloway-Williams, who was qualified **as an expert in child sexual abuse dynamics**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Jones objected to the admission of Galloway-Williams' testimony, **arguing the basis for her opinions (1) was not reliable, and (2) that the subject matter of her testimony was not beyond the ordinary knowledge of the jury**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- The judge qualified her as an expert in child abuse dynamics over objection.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Jones argues the trial judge erred in qualifying Galloway-Williams as an expert because **(1) the subject matter of her testimony was not beyond the ordinary knowledge of the jury**. According to Jones, (2) there is no field of study regarding "child sex abuse dynamics," and (3) the State used that term to **mask her actual role as a forensic interviewer**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Though she was admitted generally as an expert in **child sex abuse dynamics**, Galloway-Williams' testimony concerned **two distinct concepts**: (1) **delayed disclosure** by sexual abuse victims and (2) the behavior of nonoffending caregivers.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- As to the first area (delayed disclosure), the law in South Carolina is settled: behavioral characteristics of sex abuse victims is an area of specialized knowledge where expert testimony may be utilized.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- However, **the behavior of nonoffending caregivers presents a less settled question**. Nevertheless, our view of the record indicates **the trial judge did not abuse his discretion in finding the subject appropriate for expert testimony**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- We caution **this holding does not create a categorical rule establishing this as a recognized area of expertise in every case**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- If such an expert is challenged, **the proper course of action** for the trial court remains to hear a proffer of the proposed expert's testimony and determine whether all of the requirements of Rule 702, SCRE, have been satisfied.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Although we find ample support for the trial judge's determination **that the subject matter of Galloway-Williams' testimony was beyond the ken of lay knowledge**, we wish to reiterate the proper test for this determination.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- In affirming the trial judge, the court of appeals **(incorrectly) took into consideration whether the jurors' responses during *voir dire* indicated any prior knowledge or experience with sexual abuse**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Next, Jones argues it was error to admit Galloway Williams' testimony because **there was no evidence demonstrating her opinions were accurate or reliable**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Specifically, Jones alleges Galloway-Williams **failed to (1) identify or name any studies supporting her opinions**, nor did she state whether (2) any of the literature she relied on had been peer reviewed.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- **With no evidence to demonstrate her reliability, Jones argues the trial judge failed to act as a *gatekeeper*. We disagree.**

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- While the Court acknowledged there is no "formulistic approach for determining … reliability" in nonscientific areas, . . .
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State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- . . ."Evidence **of mere procedural consistency does not ensure reliability** without some evidence demonstrating that **the individual expert is able to draw reliable results** from the procedures of which he or she consistently applies."

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Although Galloway-Williams did not identify by name the articles serving as the basis for her opinions, she indicated she could provide citations if given an opportunity to gather them.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Additionally, she explained **her opinions were supported by peer-reviewed** professional journals and trade publications, all of which were uniformly accepted and recognized by child sexual abuse experts and professionals.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- We find Jones' argument **conflates reliability with perfection**.
- There is always a possibility that an expert witness's opinions are incorrect.
- However whether to accept the expert's opinions or not is a matter **for the jury to decide**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Trial courts are tasked only with determining whether the basis for the expert's opinion **is sufficiently reliable such that it may be offered into evidence**.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- Here, Galloway-Williams met the threshold reliability requirement when she testified her methods were (1) published in professional articles and trade publications, (2) **subject to peer review**, and (3) uniformly accepted and relied upon by other professionals in the field.

State v. Roy Lee Jones, ___ S.C. ___, 817 S.E.2d 268 (filed July 5, 2018) – "Child abuse dynamics" expert

- **Rule 702**. TESTIMONY BY EXPERT:
  - **If scientific, technical, or other specialized knowledge** will assist the trier of fact to understand the evidence **or** to **determine a fact in issue**, a witness **qualified as an expert** by **knowledge, skill, experience, training, or education**, may testify thereto **in the form of an opinion** or otherwise.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – wrongful exclusion of evidence bias

- The Supreme Court, Beatty, C.J., held that Confrontation Clause **error arising from trial court's failure to admit testimony regarding U-visa application** by child witness's mother was not harmless.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – wrongful exclusion of evidence bias

- **A U-visa allows victims of certain crimes**, who have suffered mental or physical abuse and **are helpful to the government in the investigation or prosecution** of the criminal activity, to be lawfully present in the United States. 8 C.F.R. § 214.14 (2017).

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – wrongful exclusion of evidence bias

- On cross-examination, Mother 1 stated **she came to the United States from Mexico illegally in 2000**.
- After Minor 1 reported the abuse, **the victim advocate informed Mother 1 about U-visas and directed Mother 1 to an attorney**.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – wrongful exclusion of evidence bias

- As a result of submitting **her U-visa application**, Mother 1 testified she became eligible for food stamps, which she now receives. Moreover, without the U-visa application, Mother 1 explained **she would be considered an illegal immigrant and would be at risk of being deported**.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – wrongful exclusion of evidence bias

- Defense counsel **attempted to elicit similar testimony from Mother 2**, who was also in the country illegally, **but the trial court refused to admit that testimony**.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – wrongful exclusion of evidence bias

- The trial court permitted defense counsel **to proffer** the following testimony outside the presence of the jury:
  1. Mother 2 **learned about U-visas** from an information sheet she received at the Lowcountry Children's Center when her daughter was being examined;

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – wrongful exclusion of evidence bias

2. Mother 2 had applied for a U-visa with the assistance of an attorney; and
3. unlike Mother 1, Mother 2 had not applied for any government benefits.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – wrongful exclusion of evidence bias

- We also agree with **Perez** that the trial court's **error in refusing to admit Mother 2's testimony concerning her U-visa application was not harmless** beyond a reasonable doubt.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – 2 Justices concur on overruling State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)

- I concur in the result reached by the majority; however, I write separately because **I believe the Court should take this opportunity to overturn our holding in State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)**, which, in my opinion has so expanded the admissibility of prior bad acts in sexual offense cases **that the exception has swallowed the rule**.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – 2 Justices concur on overruling State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)

- The dangers in permitting the **liberal admission** of such prior bad acts are readily apparent. In fact, **this Court has repeatedly warned of the prejudicial dangers stemming from the introduction of prior bad acts which are similar** to the one for which the defendant is being tried. See, e.g., State v. Brooks, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000); State v. Gore, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – 2 Justices concur on overruling State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)

- Absent an amendment to our rules of evidence creating a different categorical rule for sexual offenses, I **would apply the common scheme or plan exception equally to sexual and nonsexual offenses alike**.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – 2 Justices concur on overruling State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)

- In the context of sexual offenses, **mere similarities alone do not necessarily establish a logical connection between the crime charged and the prior bad acts** such that the existence of one tends to prove the existence of the other.

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – 2 Justices concur on overruling State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)

- **I would overrule Wallace** and restore the common scheme or plan exception in sexual misconduct cases to its **original purpose as articulated in Lyle** whereby proof of a common plan or system requires . . .
- [continued on next slide]

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – 2 Justices concur on overruling State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)

- . . . "**the establishment of such a visible connection between the extraneous crimes and the crime charged** as will make *evidence of one logically tend to prove the other as charged.*"

State v. Venacio Diaz Perez, 423 S.C. 491, 816 S.E.2d 550 (August 2, 2018) – 2 Justices concur on overruling State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009)

- **Just as mere similarities between the prior bad act and the crime charged would be insufficient in the case of all other crimes.**

State v. Justin Jermaine Johnson, 422 S.C. 439, 812 S.E.2d 739 (Ct.App. March 28, 2018), cert. denied August 3, 2018 – **Two way video admission was error**

- Johnson maintains **the circuit court erred in permitting Investigator Moore to testify via Skype in violation of the Confrontation Clause of the Sixth Amendment.**

State v. Justin Jermaine Johnson, 422 S.C. 439, 812 S.E.2d 739 (Ct.App. March 28, 2018), cert. denied August 3, 2018 – **Two way video admission was error**

- **We agree**. However, we again conclude this constituted harmless error under the facts of this case.

State v. Justin Jermaine Johnson, 422 S.C. 439, 812 S.E.2d 739 (Ct.App. March 28, 2018), cert. denied August 3, 2018 – **Two way video admission was error**

- The majority of courts that have addressed two-way closed circuit testimony have adopted the same test set forth in Maryland v. Craig, 497 U.S. 836 (1990), which addresses the use of one-way video testimony **in the context of a child sexual assault case**.

State v. Justin Jermaine Johnson, 422 S.C. 439, 812 S.E.2d 739 (Ct.App. March 28, 2018), cert. denied August 3, 2018 – **Two way video admission was error**

- In Craig, the Supreme Court recognized the right to face-to-face confrontation under the Sixth Amendment is not absolute, **but that it may only be modified "where denial of such confrontation is necessary to further an important public policy** and only where the reliability of the testimony is otherwise assured."

State v. Justin Jermaine Johnson, 422 S.C. 439, 812 S.E.2d 739 (Ct.App. March 28, 2018), cert. denied August 3, 2018 – **Two way video admission was error**

- Other courts have generally permitted such testimony **only in cases in which the witness's health prevents him or her from traveling** or possibly when a witness is beyond the subpoena power of the court.

State v. Justin Jermaine Johnson, 422 S.C. 439, 812 S.E.2d 739 (Ct.App. March 28, 2018), cert. denied August 3, 2018 – **Two way video admission was error**

- We decline to adopt a specific test for the admission of two-way closed circuit testimony in this case, **as convenience and expediency alone** do not rise to the level of an exceptional circumstance. Parties can consent to it.

CASE IN THE HOPPER – "MUTUAL COMBAT"

State v. Joseph Bowers, Appellate Case No. 2014-002176 (Argued in October, 2018)

- Whether the court erred **by instructing the jury on "mutual combat"** since the instruction was inapplicable to the facts of this case **since there was no evidence of a tacit agreement to engage in "mutual combat"?**

CASE IN THE HOPPER – "MUTUAL COMBAT"

State v. Joseph Bowers, Appellate Case No. 2014-002176 (Argued in October, 2018)

- "There was not any evidence before the jury that **[Bowers] went to the club with the intention of engaging in "mutual combat."**

CASE IN THE HOPPER – "MUTUAL COMBAT"

State v. Joseph Bowers, Appellate Case No. 2014-002176 (Argued in October, 2018)

- "Whether or not mutual combat exists is significant because "**the plea of self-defense is not available to one who kills another in mutual combat**." Id. (citing State v. Jones, 113 S.C. 134, 101 S.E. 647 (1919))."

CASE IN THE HOPPER – "MUTUAL COMBAT"

State v. Joseph Bowers, Appellate Case No. 2014-002176 (Argued in October, 2018)

- "This was not a case where their differences would be settled **with a duel, or a shootout at the O.K. Corral** with **Wyatt Earp, Doc Holliday**, Virgil Earp and Morgan Earp on one side and **Bill Claiborne**, Ike and Billy Clanton and **Tom and Frank McLaury** on the other side."

CASE IN THE HOPPER – "MUTUAL COMBAT"

State v. Joseph Bowers, Appellate Case No. 2014-002176 (Argued in October, 2018)

- **"There also was not the Sharks and the Jets from West Side Story agreeing to a 'fair fight,' at a specific location**, which turned into a deadly rumble."

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – "Search for the truth" improper instruction

- We agree with Appellant that a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, **that its role is to search for the truth, or to find the true facts, or to render a just verdict**.

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – "Search for the truth" improper instruction

- These phrases could be understood to place an obligation on the jury, **independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice**.

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – "Search for the truth" improper instruction

- We instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven **the defendant's guilt beyond a reasonable doubt**.

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – "Search for the truth" improper instruction

- **Instruction turns a "guilty beyond a reasonable doubt" standard into a civil "preponderance of evidence" standard.** (Not in the opinion -- but correct.)

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – **closing reply argument & Due Process**

- Appellant argued that State's reply argument "**was nothing but one big sandbag**, which we discussed in chambers" and constituted a violation of his **due process** rights.

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – **closing reply argument & Due Process**

- Appellant asserted the State presented factual scenarios for the first time in its reply argument and requested either a mistrial **or the opportunity to reply to the State's argument.** The trial judge denied both requests.

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – **closing reply argument & Due Process**

- **Appellant introduced evidence during trial**. Under our holdings in Huckie and Gellis, the State was entitled to the reply argument. Appellant asked the trial court to require the State to open in full on the facts and the law . . .
- [continued on next slide]

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – **closing reply argument & Due Process**

- **. . . and asked the trial court to restrict the State's reply argument to rebuttal to matters raised by Appellant in his closing argument**. The trial court denied these requests.

State v. Michael Vernon Beaty, Jr., 423 S.C. 26, 813 S.E.2d 502 (refiled April 25, 2018) – **closing reply argument & Due Process**

- While the State **perhaps did not restrict its reply argument to matters raised by Appellant**, and while Appellant was not allowed to respond to the foregoing three points, we conclude Appellant did not suffer prejudice as a result. No Due Process violation.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- The [burglary] victim called the police.
- The first officer on the scene took the cell phone to the police station and secured it in a locker in the evidence room.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- **Six days later**, Detective Jordan Lester retrieved the cell phone and was able to observe "**a background picture of a black male with dreadlocks**."

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- Considering the phone to be "**abandoned property**" he guessed the code to unlock the screen – 1-2-3-4 – and **opened the phone without a warrant**.
- Detective Lester looked through the "contacts stored on the phone and found **a person listed as "Grandma."**

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- **He entered "Grandma's" phone number into a database** called Accurint and identified a list of her relatives, which included a man matching the age of the person pictured on the background screen of the cell phone **-- Lamar Brown**.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- We begin our review of the trial court's finding that Brown abandoned his phone **with the factual premise of Riley, that cell phones hold "the privacies of life."**

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- Brown's expectation that his **privacy would be honored -- at least initially -- is supported by the fact he put a lock** on the screen of the phone.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- Additionally, **we can presume Brown did not intentionally leave his cell phone at the scene** of the crime, for he must have known that doing so would lead to the **discovery that he was the burglar**.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

1. There is no evidence **he tried to call the phone** to see if someone would answer.
2. There is no evidence he attempted **to text the phone in hopes the text would show on the screen**, perhaps with an alternate number where Brown could be reached,

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

3. or perhaps even **with a message that he did not relinquish his privacy in the contents of the phone**.
4. There is no evidence he attempted to contact the service provider for information on the whereabouts of the phone.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

5. There is certainly *no evidence he went back to the scene of the crime* to look for it, **or that he attempted to call the police** to see if they had it.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- Instead, he contacted his service provider **and cancelled his cellular service to the phone**.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- "A legitimate expectation of privacy is both **subjective and objective in nature**: the defendant must show (1) he had a **subjective expectation of not being discovered, and** (2) the expectation is **one that society recognizes as reasonable**." Missouri, 361 S.C. at 112

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- Brown told the officer who first interviewed him that **he canceled cellular service to the phone** when he realized "someone has [my] phone."

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- Considering these facts, **Brown clearly had no "subjective expectation" that his privacy** in the digital information on the phone would be preserved.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- Conclusion: When Detective Lester made the decision **to unlock the phone several days later, he was aware of these circumstances**, . . .
- [continued on next slide]

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Cell phone information can be abandoned

- . . . all of which, when considered together, provided sufficient objective facts **to support his belief that any expectation of privacy in the phone and its data had been abandoned**.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Dissent: Brown did not abandon his expectation of privacy **(Beatty, CJ)**

- I would reverse the decision of the Court of Appeals **and find, as did Judge Konduros in her well-reasoned dissent, Brown did not abandon his expectation of privacy** in the contents of his cell phone.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Dissent:
- Brown did not abandon his expectation of privacy **(Beatty, CJ)**

- Accordingly, I would conclude that law enforcement's warrantless search of Brown's cell phone violated the Fourth Amendment.

State v. Lamar Sequan Brown, 423 S.C. 519, 815 S.E.2d 761 (filed June 13, 2018) – Dissent:
- Brown did not abandon his expectation of privacy **(Beatty, CJ)**

- I believe Riley **creates a categorical rule that, absent exigent circumstances, law enforcement must procure a search warrant** before searching the data contents of a cell phone.

State v. David Wilkins Ross, 423 S.C. 504, 815 S.E.2d 754 (June 13, 2018) – **Mandatory electronic monitoring under CSC 3rd, and failure to register statute**

- "A person who is required to register pursuant to this article for committing … criminal sexual conduct with a minor in the third degree (**formerly lewd act upon a child**) …
- [continued on next slide]

State v. David Wilkins Ross, 423 S.C. 504, 815 S.E.2d 754 (June 13, 2018) – **Mandatory electronic monitoring under CSC 3rd, and failure to register statute**

- . . . and who violates a provision of this article, **must be ordered by the court** to be monitored by the Department of Probation, Parole and Pardon Services **with an active electronic monitoring device**."

State v. David Wilkins Ross, 423 S.C. 504, 815 S.E.2d 754 (June 13, 2018) – **Mandatory electronic monitoring under CSC 3rd, and failure to register statute**

- Ross pled guilty **in 1979 to lewd act upon a child**. Thirty-two years later, he was convicted in **magistrate's court** of misdemeanor **failure to register as a sex offender**.

State v. David Wilkins Ross, 423 S.C. 504, 815 S.E.2d 754 (June 13, 2018) – **Mandatory electronic monitoring under CSC 3rd, and failure to register statute**

- Ross argues **the automatic imposition of lifetime electronic monitoring** required by subsection **23-3-540(E)** of the South Carolina Code (Supp. 2017) as a result of his failure to register **is an unreasonable search under the Fourth Amendment.**

State v. David Wilkins Ross, 423 S.C. 504, 815 S.E.2d 754 (June 13, 2018) – **Mandatory electronic monitoring under CSC 3rd, and failure to register statute**

- **Addressing only this particular subsection of section 23-3-540, we agree.**

State v. David Wilkins Ross, 423 S.C. 504, 815 S.E.2d 754 (June 13, 2018) – **Mandatory electronic monitoring under CSC 3rd, and failure to register statute**

- We find electronic monitoring under subsection 23-3-540(E) (only this subsection for now) "must be ordered by the court" **only after the court finds electronic monitoring would not be an unreasonable search based on the totality of the circumstances presented in an individual case**.

State v. Lamont Antonio Samuel, 422 S.C. 596, 813 S.E.2d 487 (February 28, 2018) – **Manipulating the court and right to self-representation**

- Samuel contends the circuit judge impermissibly exceeded the scope of the Faretta inquiry by considering [Defense Attorney] Grant's testimony to conclude that Samuel was attempting to manipulate the proceedings, **thereby precluding him from proceeding *pro se*. We agree.**

State v. Lamont Antonio Samuel, 422 S.C. 596, 813 S.E.2d 487 (February 28, 2018) – **Manipulating the court and right to self-representation**

- This Court **never held that a criminal defendant acting *pro se* must comply with the rules of professional conduct**. We are unaware of any jurisdiction which has **explicitly required criminal defendants to comply with ethical rules** governing lawyers.

State v. Lamont Antonio Samuel, 422 S.C. 596, 813 S.E.2d 487 (February 28, 2018) – **Manipulating the court and right to self-representation**

- Indeed, this Court has suggested, albeit in *dicta*, that **the opposite may be true**.
- [continued on next slide]

State v. Lamont Antonio Samuel, 422 S.C. 596, 813 S.E.2d 487 (February 28, 2018) – **Manipulating the court and right to self-representation**

- See State v. Barnes, 413 S.C. 1, 3 n.1, 774 S.E.2d 454, 455 n.1 (2015) ("Even if we believe that **a criminal defendant's exercise of his constitutional rights stems from impure motives, that motivation alone is not a basis to deny him these rights**.")

State v. Lamont Antonio Samuel, 422 S.C. 596, 813 S.E.2d 487 (February 28, 2018) – **Dissent (Kittredge and James, J.) – Self-representation & discretion for improper motives**

- [i]n the vast majority of cases, requests to proceed *pro se* will be regularly and properly granted, but trial court discretion must always be present to address the particular circumstances of the case, such as **where this right is asserted to serve manipulative, disruptive, or dilatory ends**.

State v. Lamont Antonio Samuel, 422 S.C. 596, 813 S.E.2d 487 (February 28, 2018) – **Dissent (Kittredge and James, J.) – Self-representation & discretion for improper motives**

- Trial court discretion ensures the integrity of our justice system.

CASE LAW UPDATE

2018 ANNUAL PUBLIC DEFENDER CONFERENCE

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